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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 251 (AKH)

5 CHARLIE JAVICE AND  
6 OLIVIER AMAR,

7 Defendants.

8 Conference  
-----x

9 New York, N.Y.  
10 July 13, 2023  
11 10:45 a.m.

12 Before:

13 HON. ALVIN K. HELLERSTEIN,

14 U.S. District Judge

15 APPEARANCES

16 DAMIAN WILLIAMS  
United States Attorney for the  
Southern District of New York  
17 DINA MCLEOD  
MICAH FESTA FERGENSON  
18 Assistant United States Attorney

19 ALEXANDER B. SPIRO  
Attorneys for Defendant Charlie Javice

20 SEAN BUCKLEY  
STEVE KOBRE  
21 Attorneys for Defendant Olivier Amar

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your  
3 appearances for the record, and remain seated

4 THE COURT: Remove your mask when you speak.

5 MR. FERGENSON: Good morning, your Honor. Micah  
6 Fergenson and Dina McLeod for the government.

7 THE COURT: Good morning.

8 MR. SPIRO: Good morning, your Honor. Alex Spiro.  
9 I'm joined by my colleagues Maaren Shah and Sam Nitze on behalf  
10 of Ms. Javice.

11 THE COURT: Good morning.

12 MR. BUCKLEY: Good morning, your Honor. Sean Buckley  
13 and Steve Kobre on behalf of Mr. Amar, who joins us at counsel  
14 table.

15 THE COURT: Good morning.

16 Who is Mr. Kobre? How do you do.

17 Is Tai Hyun Park and Jan Philip Kernisan here? Are  
18 they on this case?

19 MR. SPIRO: They are not, your Honor.

20 THE COURT: Okay. So what are we doing now,  
21 Ms. McLeod?

22 MR. FERGENSON: Yes, your Honor. So I think the first  
23 order of business is to arraign both defendants on the  
24 superseding indictment; and then on scheduling, your Honor, the  
25 plan at the first conference had been to set a motion schedule

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1 today. Given the addition of the new defendant, we understand  
2 that the defense is going to ask for, you know, some additional  
3 time to come back and set a motion schedule in 45 or 60 days,  
4 your Honor.

5 And, lastly, I just note that at the Court's  
6 convenience, as we noted at the first conference, the  
7 government is ready to set a trial date.

8 THE COURT: Fine. Let's arraign the two defendants.

9 THE DEPUTY CLERK: Where is Charlie Javice? I'm  
10 sorry. I should have remembered.

11 You are Charlie Javice?

12 DEFENDANT JAVICE: I am.

13 THE COURT: Please stand. Remove your mask.

14 THE DEPUTY CLERK: Have you seen a copy of the  
15 indictment?

16 DEFENDANT JAVICE: I have.

17 THE DEPUTY CLERK: Have you discussed it with your  
18 attorney?

19 DEFENDANT JAVICE: I have.

20 THE DEPUTY CLERK: Would you like me to read it to  
21 you?

22 DEFENDANT JAVICE: No, thank you.

23 THE DEPUTY CLERK: How do you plead?

24 DEFENDANT JAVICE: Not guilty.

25 THE COURT: A plea of not guilty will be entered on

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1 behalf of Ms. Javice.

2 How do you pronounce Javice?

3 DEFENDANT JAVICE: Javice, your Honor.

4 THE COURT: Javice. Thank you.

5 THE DEPUTY CLERK: Mr. Amar. You are Olivier Amar?

6 DEFENDANT AMAR: Correct.

7 THE COURT: Have you seen a copy of the indictment?

8 DEFENDANT AMAR: I have.

9 THE DEPUTY CLERK: Have you discussed it with your  
10 attorney?

11 DEFENDANT AMAR: I have.

12 THE DEPUTY CLERK: Would you like me to read it to  
13 you?

14 DEFENDANT AMAR: No, thank you.

15 THE DEPUTY CLERK: How do you plead?

16 DEFENDANT AMAR: Not guilty.

17 THE COURT: A plea of not guilty will be entered on  
18 behalf of Mr. Amar.

19 So, again, both defendants plead not guilty.

20 Mr. Fergenson, please tell me more about the case.

21 There's not much in the indictment.

22 MR. FERGENSON: Yes, your Honor.

23 So the case relates to the acquisition of a company  
24 called Frank. Frank was a start up fintech company that sought  
25 to help students apply for financial aid for college or

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1 graduate school. Ms. Javice was the CEO and founder of Frank.  
2 Mr. Amar was the chief growth officer, effectively the number  
3 two at the company.

4 In 2021, the defendants sought to put their company on  
5 the market for an acquisition. They pitched to a variety of  
6 potential acquiring companies, including two major banks. The  
7 bank that ultimately acquired Frank was JPMorgan Chase. A  
8 material part of that deal, your Honor, was the number of  
9 customers or the number of account sign-ups that Frank had.

10 The defendants lead Chase and others to believe that  
11 Frank had over four million customer sign-ups. In reality, the  
12 number was far less, around 300,000. Eventually, and, you  
13 know, your Honor, there's a very detailed complaint that has  
14 additional facts, but at a high level, eventually, JPMC found  
15 out about the fraud, terminated the defendants. And that's why  
16 we're here today.

17 THE COURT: But there was no acquisition?

18 MR. FERGENSON: There actually was an acquisition,  
19 your Honor. I apologize if I skimmed over that. Chase  
20 acquired Frank for \$175 million.

21 THE COURT: Was Frank an audited company?

22 MR. FERGENSON: It was not, your Honor. I mean, it  
23 was not a publicly traded company. It was a start up.

24 THE COURT: Did it have Certified Public Accountants  
25 doing audits?

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1                   MR. FERGENSON: I'm not certain of that, your Honor,  
2 but it may well have.

3                   THE COURT: It's curious to me how this kind of set of  
4 facts could continue through an acquisition --

5                   MR. FERGENSON: Yes, your Honor.

6                   THE COURT: -- understanding the due diligence Chase  
7 and Chase's lawyers, and Chase's investment bankers, and the  
8 accounting that was done at Frank.

9                   MR. FERGENSON: Yes. And perhaps to provide a little  
10 more context on that, your Honor, in the course of the due  
11 diligence on the deal, JPMorgan sent the defendants a data  
12 validation request. So they said, you've told us you have all  
13 this data from your account sign-ups, these, you know, over  
14 four million people. We want to verify that, that you actually  
15 have this data.

16                  And in response, the defendants created a fake data  
17 set. So a giant -- essentially, a giant Excel spreadsheet that  
18 had over four million rows, and lots of purported data. But it  
19 was all fake. And they sent that to a -- you know, a data  
20 company, essentially, that was going to perform the diligence  
21 to check that they had, in fact, had data in the rows and  
22 columns, as they had represented. And that's what they did,  
23 because it, in fact, was filled in as was represented, even  
24 though it was all fake. The data validation company, this  
25 third party, said, yeah, they have data filled in these rows.

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1           And then, I think the second point, your Honor, is  
2 that the defendants immediately sought to start the cover up as  
3 well. So they actually went -- they knew that eventually  
4 Chase, since they had been acquired and become a part of it,  
5 would ask them for the customer data list, and they wouldn't be  
6 able to send them a completely fake list, so they went and  
7 purchased, on the open market, college student data. And they  
8 bought a list of over four million college students, and when  
9 Chase eventually went and asked them, okay, send your student  
10 data list, they sent this student list that they had bought on  
11 the open market.

12           And the way Chase I think ultimately identified the  
13 fraud, and what lead them to start sort of investigating the  
14 issue, there were a few things, but one of the important events  
15 was they sent this list that they had bought on the open  
16 market -- and they bought it for \$100,000, your Honor. A lot  
17 less than 175 million. And when Chase -- they sent that to  
18 Chase. When Chase did a test run of a marketing campaign, so  
19 they sent an email, marketing email to about 400,000 of the  
20 students on this list. The response was horrible. A lot of  
21 the emails were old and didn't work. Almost nobody clicked  
22 through to it. And it was completely unexpected.

23           I mean, it basically essentially, from their view, was  
24 if not worthless, worth a lot less than what they had expected.

25           THE COURT: This was discovered after the acquisition?

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1                   MR. FERGENSON: That's correct, your Honor. It took  
2 several months, and then there was an investigation.

3                   THE COURT: There was a fraud, and they uncovered the  
4 fraud.

5                   MR. FERGENSON: Correct, your Honor.

6                   THE COURT: All right. So what are we going to do  
7 now? You want a delay of how much time?

8                   MR. FERGENSON: I'll defer to the defense. We  
9 understand that they were --

10                  THE COURT: Have you made your discovery?

11                  MR. FERGENSON: Yes, your Honor. So we have produced  
12 the Rule 16 in our possession today. We made a large initial  
13 production at the time of the first -- the initial conference,  
14 your Honor, and we made a second substantial production  
15 recently. And those have been to Ms. Javice's counsel.

16                  Mr. Amar's counsel has not -- given he just got  
17 indicted yesterday, he does not yet have that discovery, but I  
18 think certainly within the next two weeks, we will get him a  
19 copy of all the Rule 16 in our possession, your Honor.

20                  MR. SPIRO: Your Honor, this is Alex Spiro. May I  
21 respond briefly?

22                  THE COURT: You may.

23                  MR. SPIRO: Your Honor asked a question in the  
24 government's recitation, that some of it was a bit puzzling, or  
25 raising a question with your Honor, and it sort of goes to

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1 that, and a little bit of what the government is representing,  
2 and representing about discovery.

3 The reality is the government is just regurgitating to  
4 the Court JPMorgan's civil lawsuit against my client. That's  
5 actually all it was. They haven't received --

6 THE COURT: Mr. Spiro, you don't have to worry about  
7 your client -- the government has the obligation to prove its  
8 case. I'm asking what they intend to prove.

9 MR. SPIRO: I understand, but I'm going to get to the  
10 discovery issue. We don't have currently, in discussion, we  
11 don't have any of JPMorgan's -- essentially, any of their  
12 internal communications amongst themselves about the  
13 accusation. They sent us some discovery, told us it should be  
14 substantially completed within 45 days. They told the Court  
15 what they said in recitation, which I have an obligation I  
16 think in a public forum to respond to. They don't actually  
17 have, according to them, the internal communications of the  
18 JPMorgan side of this yet. They haven't provided them to us.  
19 And we believe that they will be exculpatory.

20 So I want the Court to understand that, and understand  
21 that's where we are in discovery. The way the discovery  
22 happened, and since we are --

23 THE COURT: Let me interrupt --

24 MR. SPIRO: Sure.

25 THE COURT: -- and ask Mr. Fergenson about that.

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1           Are you intending to produce that information?

2           MR. FERGENSON: Yes, your Honor.

3           So we have produced, I think, from JPMC, well over  
4 100,000 documents just from that one party. We understand  
5 they're continuing to make rolling productions. As we receive  
6 them, we will also produce them as Rule 16 discovery, your  
7 Honor.

8           I think Mr. Spiro may be slightly confused about the  
9 way Rule 16 works, which is the government provides the Rule 16  
10 materials in its possession. We can't produce things we have  
11 not received.

12          MR. SPIRO: Your Honor, may I be heard further on the  
13 discovery issue?

14          THE COURT: You may.

15          MR. SPIRO: I'm not confused about Rule 16. This case  
16 has proceeded differently than other cases, because rather than  
17 a grand jury subpoena, the production of documents, an  
18 assessment -- an independent assessment by the government, and  
19 then a decision to charge, JPMorgan simply provided what they  
20 wanted to provide to the government.

21          And so my point to the Court is this is a different  
22 set of discovery issues than what we thought existed at the  
23 time.

24          THE COURT: I understand what you want.

25          Let me ask this: Can you, under the Rules, issue a

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1 trial subpoena to JPMorgan to produce, well, the things you say  
2 you want to have?

3 MR. SPIRO: We can prepare one immediately for your  
4 Honor, yes.

5 THE COURT: Would there be any objection to doing  
6 that, Mr. Fergenson?

7 MR. FERGENDSON: Your Honor, I think we would have to  
8 assess whether it would comply with the requirements of Rule  
9 17, but I think maybe just one further --

10 THE COURT: It would be ahead of the trial, but for  
11 purposes of use in a trial. I can see the relevance of that  
12 information. Did JPMorgan rely on this information, from your  
13 point -- from your account, reliance is suggested, but there  
14 may be items in the correspondence that show differently.

15 I think it would be a good idea, but -- unless you  
16 issue the subpoena --

17 MR. FERGENDSON: Well, your Honor, so when I mentioned  
18 the rolling productions we're expecting to receive, we expect  
19 those to also include additional internal JPMC communications.

20 THE COURT: Do they have a compulsion to deliver -- is  
21 there a grand jury subpoena --

22 MR. FERGENDSON: Yes. Yes, your Honor.

23 THE COURT: So in complying with a subpoena.

24 MR. FERGENDSON: Correct.

25 THE COURT: All right. It doesn't seem to me a

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2 third-party subpoena is necessary, Mr. Spiro, but this is  
3 information obtained by the government to the extent it exists  
4 in the files of Chase Manhattan, Morgan Chase, and produced to  
you.

5 When do you think all your production will be  
6 finished, Mr. Fergenson?

7 MR. FERGENSON: Do you mean when we expect to produce  
8 the discovery we currently have?

9 THE COURT: You have to give a terminal date to Chase  
10 to get everything going. You can't let them just, at their  
11 leisure --

12 MR. FERGENSON: Understood, your Honor.

13 Look, our understanding is they're diligently  
14 responding to the subpoena that produced hundreds of thousands  
15 of documents, and there are hundreds of thousands of documents  
16 to review in total in this.

17 It's a bit of an unusual situation where JPMorgan  
18 acquired this company entirely, and so the documents responsive  
19 to, you know, the topic of its acquisition are voluminous. But  
20 our understanding is they are diligently responding. They've  
21 made several productions, including many substantial  
22 productions.

23 I just wanted to also note --

24 THE COURT: I think you should obtain a date from  
25 them, and let Mr. Spiro, and Mr. Amar's counsel, and me know

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1 that.

2 MR. FERGENSEN: Understood, your Honor. We'll do  
3 that.

4 THE COURT: How much time do you need now, Mr. Spiro?

5 MR. SPIRO: I don't want to revisit the Groundhog Day  
6 of last time, but I just need the discovery, and then we can --  
7 so it's sort of circular to me that your Honor had, the last  
8 time we were here, asked other pointed questions to the  
9 government about the time. Your Honor just did it again.

10 THE COURT: How about I say to you 30 days from now.

11 MR. SPIRO: If 30 days from now is going to move this  
12 ball further down the field, so we can get the relevant  
13 discovery, not what we've been provided, absolutely happy to  
14 come back in 30 days.

15 THE COURT: I don't know that you'll be entitled to  
16 all of the discovery you would be in a civil case, but I'd like  
17 the government to discharge its obligations under Rule 16  
18 promptly, not at a leisurely pace.

19 So we'll have a status conference in 30 days to find  
20 out where you stand.

21 MR. SPIRO: Thank you, your Honor.

22 THE COURT: At that time, I will fix dates for  
23 motions.

24 MR. FERGENSEN: Understood, your Honor. And I know  
25 Mr. Amar's counsel recently joined the case, but as long as

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1 they are okay with 30 days to set the motion schedule as well,  
2 that is fine for the government.

3 THE COURT: Nothing's going to happen in 30 days  
4 except I'm going to know if there's more production or not.

5 MR. FERGENSEN: Understood, your Honor.

6 THE COURT: And hopefully there will be some more  
7 production.

8 MR. FERGENSEN: Understood.

9 THE COURT: Is 30 days okay, Mr. Kobre? Mr. Buckley?

10 MR. BUCKLEY: Yes, your Honor. For a status  
11 conference?

12 THE COURT: Yes.

13 MR. BUCKLEY: That's fine. Thank you.

14 THE COURT: Is there a *Brady* order in the case?

15 MS. MCLEOD: Actually, there is one for Javice, but  
16 there is not one for --

17 THE COURT: Take your mask off.

18 MS. MCLEOD: Sorry, your Honor.

19 There is one for Ms. Javice, but not for Mr. Amar. So  
20 it makes sense to --

21 THE COURT: The government knows its obligations under  
22 *Brady*, what could happen in terms of trying the case if you  
23 don't comply with *Brady*.

24 MR. FERGENSEN: Yes, your Honor.

25 THE COURT: Okay. We'll put in such an order.

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1 MR. FERGENSEN: Thank you, your Honor.

2 THE COURT: Is there anything else you want to bring  
3 to my attention, Mr. Spiro?

4 MR. SPIRO: No, your Honor. Thank you.

5 THE COURT: Mr. Buckley?

6 MR. BUCKLEY: No, your Honor. Thank you.

7 THE COURT: Okay. So I'll fix a date 30 days from  
8 now.

9 THE DEPUTY CLERK: August 15 at 11:00.

10 THE COURT: August 15 at 11:00.

11 Any motion?

12 MR. FERGENSEN: Yes, your Honor. The government moves  
13 to exclude time under the Speedy Trial Act in the interests of  
14 justice, so that the government can produce Rule 16 discovery  
15 to Mr. Amar's counsel, and they can continue to -- and both  
16 defendants can continue to assess any motions.

17 THE COURT: Without objection, folks?

18 MR. SPIRO: No, your Honor.

19 MR. BUCKLEY: No objection, your Honor.

20 THE COURT: So ordered.

21 Is there anything else you want to bring to my  
22 attention?

23 MR. FERGENSEN: No. Thank you, your Honor.

24 THE COURT: We'll see you in 30 days.

25 (Adjourned)